

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.18182 of 2012

ORDER:

The present Writ Petition came to be filed seeking issuance of Writ of Mandamus declaring the endorsement dated 15.12.2011 issued by the Tahasildar, Kalidindi Mandal, Krishna District, rejecting the request of the petitioner in respect of Survey of the land in R.S.No.48/11 situated at Kocherla village, Kalidindi Mandal, as illegal and improper.

The averments in the affidavit filed in support of the Writ Petition would show that one Gorla Narasimhulu was the owner and possessor of the land to an extent of Ac.0.35 cents in R.S.No.4/11B and also owns a house site to an extent of Ac.0.05 cents in R.S.No.48/11 situated at Kotcherla village, Kalidindi Mandal, Krishna District. It is further stated that the petitioner is an owner and possessor of land to an extent of Ac.0.70 cents in R.S.No.957/1B of Vyvaka village, Mudinepalli Mandal, Krishna District apart from other lands. The said Gorla Narasimhulu executed an unregistered Will dated 13.09.1993 bequeathing his movable and immovable properties in favour of the petitioner. Certain suits were also filed for recovery of amounts advanced by him. While the said suits were pending, the said Gorla Narasimhulu died on 09.11.1993 and as such the petitioner claims to have succeeded to the said properties

by virtue of the Will. One Bodavula Buchamma who is younger sister of Gorla Narasimhulu also claims to be a successor by disputing the execution of the Will. Hence, the petitioner filed S.C.O.P. No.82 of 1995 seeking succession in respect of the money to be recovered in the suits filed by late G.Narasimhulu. However, the said O.P., was dismissed on 16.07.1999. Aggrieved by the same, the petitioner filed C.M.A. No.2377 of 2000 which was allowed on 09.01.2004. Pursuant to the orders passed by the learned Single Judge, the said Buchamma filed L.P.A. 35 of 2004 and the same was dismissed on 15.12.2004. It is stated that inspite of giving number of representations enclosing copies of the orders passed, there is no action from the second respondent. However, on 17.03.2011 the second respondent issued a letter informing about holding of an enquiry and also to take action as per R.O.R. Act. It is stated that inspite of the said order there was no action on behalf of 4th respondent. Instead of acting on letter of the Collector, the 4th respondent issued the impugned endorsement which is the subject of challenge in the writ petition. Earlier in the year 2011, the petitioner herein filed W.P.No.26283 of 2011 seeking a direction to the respondent No.3 therein to send a Surveyor to fix the boundaries of lands situated in R.S.Nos.963-2 and 964-1 situated in Vyvaka Mandal, Mudinepally Mandal. By an order dated 22.09.2011 this Court disposed of the Writ

Petition directing the respondents 3 and 4 therein to consider the application submitted by the petitioner therein for grant of pattadar passbook and title deeds in respect of lands acquired by him, by virtue of the Will executed by Gorla Narasimhulu and pass orders within four weeks from the date of receipt of the copy of that order. It is said that subsequent to the passing of the order in the Writ Petition, the petitioner herein made a representation to the 4th respondent requesting him to depute a Mandal Surveyor for measuring the lands and to show the location of Ac.0.05 cents in R.S.No.48/11. It is said that the averment in the affidavit show that G.Venkatasubbamma objected for the said survey and the Surveyor after having a talk on telephone informed the petitioner that he cannot measure the lands unless there is a direction from this Hon'ble Court to that effect. Hence, the present Writ Petition is filed challenging the endorsement dated 15.12.2011.

No counter is filed on behalf of the respondents except disputing the averments in the affidavit filed on the basis of the oral instructions received by the Government Pleader.

A perusal of the endorsement dated 15.12.2011 would show that representation made by the petitioner for survey of the land was rejected on the ground that the said extent of land is not recorded in F.M.B. and as such it is not possible to survey the land and show the

boundaries as per 34-A, 6 in Chapter II of Board of Revenue Standing Orders. The learned Government Pleader for Revenue submits that there are some disputes between neighbouring land owners and as such the question of settling the dispute by way of getting the land surveyed may not be proper. He submits that if there are disputes between the neighbouring land owners the appropriate remedy would be to invoke the common law remedy.

In order to decide the issue, it would be appropriate to refer B.S.O.34-A, 6, which is as under:-

“B.S.O.34-A Maintenance of revenue records and registration in the normal course of revenue administration:

Note: The designation “Surveyor” wherever used in these Standing Orders and Appendices includes the “Firka Deputy Surveyor” also.

6. Rules for the preparation and grant of copies of Field

Maps:-

1) Application for copies of field maps should be made to the taluk Tahasildar in writing and should specify-

(a) the name of the village and the survey number of the field of which a plan is required; and

(b) the manner in which the copy should be delivered to the applicant, whether in person or by post.

(2) Applications for copies of field maps will be registered in the taluk office in a separate register to be maintained in the form prescribed in Appendix V.

(3) Fees: Applicants for copies of field maps should deposit with their applications. Two rupees for a map plotted on a sheet of paper of the size used for a page of the field measurement book and two rupees for every additional sheet enquired. If a single sheet larger than a page of the field measurement book is required the excess in pages or portions of a page will be treated as additional sheets for the purpose of levying fees. The amount should be paid in cash into the taluk treasury or remitted by money order and should be credited to “029 Land Revenue-(E) other receipts (vii) other items.”

(4) Preparation of copies:- Bank post paper should be used

for copies of field maps. The Head Quarters Firka Deputy Surveyor should prepare the copies. The copy should be an exact tracing of the field plan in the atlas of field maps maintained in the taluk office with all corrections to date. If printed maps are available, they should be brought upto-date by plotting all corrections which appear in the taluk copy of the field atlas. Manuscript maps should never be prepared when printed maps are available for the fields concerned.

(5) The copy so prepared will be compared with the original by the Taluk Surveyor. The taluk ministerial head will be held responsible for any delay in the grant of the copy and every copy must be signed by him and delivered to the applicant in the manner specified in the application. If the applicant does not call at the taluk office, intimation should be sent to him that the copy is ready for delivery.

A reading of the said endorsement would show that the survey could not be done not due to any objection raised by the neighbouring land owners, but due to extent of said land not being recorded in FMB Register. Therefore, the argument of the Government Pleader that there are disputes with the neighbouring land owners may not *prima facie* appears to be correct. In the absence of any counter being filed by the respondents, the averments in the affidavit filed in support of the Writ Petition go un-rebutted and also stands established that the Pattadar pass book and title deeds in respect of Ac.0.05 cents of land in R.S.No.48/11 situated at Kocherla village, Kalidindi Mandal have been furnished to the petitioner. Having furnished the pattadar pass book and title deeds in respect of the land in dispute, the respondents should have taken appropriate steps in getting the land identified and surveyed. Further, B.S.O. 34-A, 6 in Chapter II deals

with rules for preparation and grant of copies of field maps. The said provision which has been referred to in the endorsement has nothing to do with the reason for rejection for survey and demarcation and also for not considering the application made by the writ petitioner.

Even the reason given by the learned Government Pleader for Revenue, with regard to the objections raised by neighbouring land owners, does not find place in the impugned endorsement. Having regard to the circumstances stated above, the 4th respondent shall proceed with conducting the survey either by himself or with the assistance of survey department in accordance with law, provided all the requirements are satisfied, for fixing the boundaries in respect of Ac.0.05 cents in R.S.No.48/11 situated at Kocherla village, Kalidindi Mandal, Krishna District.

With the above direction, the Writ Petition is disposed of. No order as to costs. Miscellaneous Petitions pending if any in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date: 25.01.2016

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